

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 57740 / April 30, 2008

Admin. Proc. File No. 3-12729

In the Matter of the Application of

MATTHEW BRIAN PROMAN

c/o Randy Scott Zelin  
Randy Scott Zelin, P.C.  
675 Old Country Road  
Westbury, New York 11590

For Review of Action Taken by

NASD

ORDER DISMISSING  
APPLICATION FOR  
REVIEW

I.

On July 20, 2007, NASD denied a request by Matthew Brian Proman for relief from sanctions imposed on him pursuant to a February 26, 1998 Decision and Order of Acceptance of Offer of Settlement ("Settlement Agreement"). On August 20, 2007, Proman appealed the denial of his request to the Commission. On September 12, 2007, Financial Industry Regulatory Authority ("FINRA") moved on NASD's behalf to dismiss Proman's application for review on the grounds that the Commission lacks jurisdiction over the matter. <sup>1/</sup> For the reasons discussed below, we find that we lack jurisdiction over Proman's appeal and consequently dismiss his application for review.

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<sup>1/</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 72 Fed. Reg. 42,190 (Aug. 1, 2007) (SR-NASD-2007-053). Because the action here was taken before that date, we continue to use the designation NASD.

NASD filed a complaint against Proman in July 1997 alleging that Proman arranged to have an imposter take the Series 7 Qualification Exam on his behalf in March 1995 and that Proman failed to respond to NASD requests for information related to the investigation of that allegation. <sup>2/</sup> In December 1997, Proman submitted, through counsel, an Offer of Settlement to NASD to resolve the charges against him. The Offer of Settlement stated that it was submitted voluntarily and waived Proman's right to appeal any written decision by NASD. On February 26, 1998, NASD entered a Decision and Order based on the Offer of Settlement barring Proman, censuring him, and fining him \$50,000.

Nine years later, on May 25, 2007, Proman filed a request with NASD seeking to vacate the bar imposed as part of the 1998 settlement which had, he claimed, a continuing adverse effect on him. <sup>3/</sup> In the request, Proman stated that he did not contest the validity of the settlement nor did he have any intention to associate with an NASD member firm or to otherwise re-enter the securities industry. On July 20, 2007, NASD denied Proman's request. This appeal followed on August 20, 2007.

## II.

Our authority to review an action of a self-regulatory organization ("SRO"), including NASD, is governed by Section 19(d) of the Securities Exchange Act of 1934. Section 19(d) authorizes Commission review of an SRO action that (1) imposes a final disciplinary sanction on any member or person associated with a member; (2) denies membership or participation to any applicant; (3) prohibits or limits any person in respect to access to services offered by such organization or a member of the organization; or (4) bars any person from becoming associated with a member. <sup>4/</sup> If we find that we do not have jurisdiction, we must dismiss the proceeding. <sup>5/</sup> We conclude that we do not have jurisdiction to consider Proman's application for review.

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<sup>2/</sup> The parties agree as to the facts.

<sup>3/</sup> Proman states that the record of the bar is accessible to anyone who researches his background. He asserts that the existence of the bar impedes his current business activities although those activities are unrelated to the securities industry.

<sup>4/</sup> 15 U.S.C. § 78s(d).

<sup>5/</sup> Sky Capital LLC, Exchange Act Rel. No. 55828 (May 30, 2007), 90 SEC Docket 2201, 2205.

In Larry Saylor, we found that we lacked jurisdiction over Saylor's request that we review NASD's refusal to vacate a thirty-two year old principal bar. 6/ We found that the NASD's action in refusing to vacate Saylor's bar was not disciplinary. We explained that "a 'disciplinary action' is 'an action that responds to an alleged violation of an SRO rule or Commission statute or rule, or an action in which a punishment or sanction is sought or intended.'" 7/ We concluded that NASD's action denying Saylor's motion was "collateral to the underlying disciplinary action in which Saylor has already been sanctioned." 8/

As in Saylor, NASD did not invoke its disciplinary procedures, did not determine that Proman had violated a statute or rule, and did not impose a final disciplinary sanction on him. These actions occurred in the 1998 NASD decision, to which Proman consented. Here, like Saylor, Proman's request to vacate the bar is collateral to the underlying disciplinary action.

We further found in Saylor that, because NASD's action merely denied Saylor collateral relief from his principal bar, NASD's denial of Saylor's request did not constitute a denial of membership or participation. 9/ We believe the same result pertains to Proman. NASD's action in rejecting Proman's request did not deny or condition Proman's membership or participation in NASD, nor did it bar him from becoming associated with an NASD member, membership or

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6/ Larry A. Saylor, Exchange Act Rel. No. 51949 (June 30, 2005), 85 SEC Docket 3118.

7/ Id. at 3121, citing Lance E. Van Alstyne, 53 S.E.C. 1093, 1098 (1998). See also Sky Capital, 90 SEC Docket at 2206 (quoting Russell A. Simpson, 53 S.E.C. 1042, 1046 (1998)).

8/ Saylor, 85 SEC Docket at 3121.

9/ Id. at 3122.



